

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

ARTHUR HARRIS,
Plaintiff,

vs.

CRST VAN EXPEDITED, INC.,
Defendant.

No. 13-CV-119-LRR

FINAL JURY INSTRUCTIONS

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 1

This is a civil case brought by the Plaintiff, Arthur Harris, against the Defendant, CRST Van Expedited, Inc. Harris alleges that during the course of his employment as a truck driver with CRST, he developed health problems and needed to take medical leave. Harris contends that CRST's actions toward him violated the Family and Medical Leave Act. CRST denies this claim and alleges that Harris is not entitled to damages.

This statement has been given to you by the court solely to inform you, by way of summary, of the respective claims of the parties. Neither the claims made nor this instruction are to be considered by you as evidence in this case.

INSTRUCTION NO. 2

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NO. 3

Neither in these instructions nor in any ruling, action or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NO. 4

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

INSTRUCTION NO. 5

I have mentioned the word “evidence.” The “evidence” in this case consists of the following: the testimony of the witnesses, the documents and other things received as exhibits and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

- (1) Statements, arguments, questions and comments by the lawyers are not evidence.
- (2) Anything that might have been said by jurors, the attorneys or the judge during the jury selection process is not evidence.
- (3) Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
- (4) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
- (5) Anything you saw or heard about this case outside the courtroom is not evidence.

If you were instructed that some evidence was received for a limited purpose only, you must follow that instruction. During the trial, documents were referred to but they were not admitted into evidence and, therefore, they will not be available to you in the jury room during deliberations.

INSTRUCTION NO. 6

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witnesses to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NO. 7

Harris and CRST have stipulated—that is, they have agreed—that certain facts are as counsel have just stated. You should, therefore, treat those facts as having been proved.

INSTRUCTION NO. 8

Certain testimony has been received into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing and sometimes by video recording. Consider that testimony as if it had been given here in court.

INSTRUCTION NO. 9

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 10

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to the testimony of each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that the witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 11

In a previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached.”

A witness may be discredited or impeached by contradictory evidence; by showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony.

You have heard evidence that Arthur Harris was once convicted of a crime. You may use that evidence to help you decide whether you believe him and how much weight to give his testimony.

INSTRUCTION NO. 12

Exhibits have been admitted into evidence and are to be considered along with all of the other evidence to assist you in reaching your verdict. You are not to tamper with the exhibits or their contents, and you should leave the exhibits in the jury room in the same condition as they were received by you.

INSTRUCTION NO. 13

A corporation acts only through its agents or employees and any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

The fact that a plaintiff or defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

INSTRUCTION NO. 14

You have heard evidence claiming Arthur Harris, Joe Anthony, Marcus Schneider and other employees of CRST made statements before this trial.

If you find such statements were made, you may regard the statements as evidence in this case the same as if the statements had been made under oath during trial.

If you find such statements were made and were inconsistent with the witness's testimony during the trial, you may also use the statements as a basis for disregarding all or any part of that witness's testimony during the trial, but you are not required to do so. You should not disregard any person's testimony during trial if other credible evidence supports it or if you believe it for any other reason.

INSTRUCTION NO. 15

Your verdict must be for Harris and against CRST if all of the following elements of Harris's claim under the Family and Medical Leave Act have been proved:

First, Harris had a serious health condition (as defined in Instruction No. 17);

Second, Harris was absent from work because of that serious health condition;

Third, Harris gave CRST timely notice (as defined in Instruction No. 18) of his need to be absent from work;

Fourth, as soon as practicable (as defined in Instruction No. 18), Harris gave CRST sufficient information so that CRST knew or should have known the absence was for a serious health condition;

Fifth, CRST failed to provide Harris Family and Medical Leave Act leave, to which he was entitled, by discharging him on February 7, 2013; and

Sixth, Harris's absence from work was a determining factor (as defined in Instruction No. 16) in CRST's decision to discharge Harris.

If any of the above elements has not been proved by the greater weight of the evidence, then your verdict must be for CRST on Harris's claim under the Family and Medical Leave Act.

INSTRUCTION NO. 16

The phrase “determining factor” as used in these instructions means that an employer would not have discharged the employee but for the employee’s absence due to a serious health condition; it does not require that his absence due to a serious health condition was the only reason for the employer’s decision.

INSTRUCTION NO. 17

A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

Incapacity plus treatment, which means a period of incapacity (inability to work, attend school or perform other regular daily activities) of more than three consecutive, full calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (1) In-person treatment two or more times by a health care provider; or
- (2) In-person treatment by a health care provider on at least one occasion which results in a course of prescription medication under the supervision of the health care provider.

INSTRUCTION NO. 18

The phrase “timely notice” as used in these instructions means that Harris must have notified CRST of his need for leave as soon as practicable after he learned of the need to take leave. “As soon as practicable” means as soon as possible and practical, taking into account all of the facts and circumstances of the individual case, which in most cases would be that same day or the next business day. Absent unusual circumstances, Harris must comply with CRST’s usual and customary notice requirements for requesting leave.

An employee must provide notice sufficient to make the employer aware that he needs FMLA-qualifying leave. The notice may be verbal, electronic, by fax or in writing. If more information is needed, it is the employer’s obligation to inquire further to determine if FMLA leave is being sought and the details of the leave to be taken.

The employee need not expressly assert rights under the FMLA or even mention the FMLA. However, the employer must have sufficient information to make it aware that the leave may qualify for FMLA protection.

INSTRUCTION NO. 19

You may not return a verdict for Harris just because you might disagree with CRST's decision or believe it to be harsh or unreasonable.

INSTRUCTION NO. 20

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The plaintiff, Arthur Harris, bears the burden to prove the facts in this case by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

INSTRUCTION NO. 21

If you find in favor of Harris under Instruction No. 15 then you must award Harris such sum as you find will fairly and justly compensate Harris for any damages you find Harris sustained as a direct result of CRST's decision to discharge Harris.

You must determine the amount of any wages and fringe benefits Harris would have earned in his employment with CRST if he had not been discharged through the date of your verdict, *minus* the amount of earnings and benefits that Harris received from other employment during that time.

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 22

If you find that Harris is entitled to damages, you are further instructed that Harris has a duty under the law to “mitigate” his damages—that is, to exercise reasonable diligence under the circumstances to minimize his damages. Therefore, if it has been proved that Harris failed to seek out or take advantage of an opportunity that was reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity.

Once Harris successfully mitigates his damages by finding other work which pays him the same or better than he earned with CRST, you may not award him backpay damages for the period beginning after the date Harris got the new job. If he was terminated from the succeeding job because of his own conduct, CRST is not responsible for damages from the date of that discharge to the date of the verdict.

INSTRUCTION NO. 23

“After-acquired evidence” is evidence of employee misconduct that is discovered after the employee’s employment has ended. Once an employer learns about employee misconduct that would have led to a legitimate discharge, the employer is not required to ignore that information, even if the information is acquired during the course of a lawsuit and even if it might not have been discovered without the lawsuit.

To prove this defense to damages, CRST must prove the following:

- (1) Harris falsified information on his employment application;
- (2) CRST was unaware of this misconduct at the time of Harris’s separation from employment; and
- (3) CRST would have terminated Harris’s employment by December 17, 2014 on those grounds alone if it had known of the false information.

If CRST has proved this defense to damages, then you must limit any award of backpay to the period from the date of Harris’s separation from employment with CRST until December 17, 2014.

INSTRUCTION NO. 24

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NO. 25

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdict.

Third, if you need to communicate with me during your deliberations, you may send a note to me, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict might be—that is entirely for you to decide.

INSTRUCTION NO. 26

Attached to these instructions you will find the Verdict Form. The Verdict Form is simply the written notice of the decisions that you reach in this case. The answers to the Verdict Form must be the unanimous decisions of the jury.

You will take the Verdict Form to the jury room, and when you have completed your deliberations and each of you has agreed to the answers to the Verdict Form, your foreperson will fill out the Verdict Form, sign and date it and advise the Court Security Officer that you are ready to return to the courtroom. Your foreperson should place the signed Verdict Form in the blue folder, which the court will provide you, and then your foreperson should bring the blue folder when returning to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return the Verdict Form in accord with the evidence and these instructions.

January 29, 2015
Date

Linda R. Reade
Linda R. Reade, Chief Judge
United States District Court
Northern District of Iowa